Sponsored by:
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SYNOPSIS
Establishes Employment and Business-Related Tax Deferral Assistance Program in EDA to allow small businesses to defer the payment and remittance of certain employment and business-related taxes during COVID-19 public health emergency.

CURRENT VERSION OF TEXT
As introduced.
AN ACT establishing the Employment and Business-Related Tax Deferral Assistance Program to allow deferment of payment and remittance of certain employment and business-related taxes during the COVID-19 public health emergency.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. a. There is established the Employment and Business-Related Tax Deferral Assistance Program to be administered by the New Jersey Economic Development Authority. The purpose of the program shall be to provide financial relief to New Jersey small businesses facing economic hardship due to the outbreak of the coronavirus disease 2019 (COVID-19). To effectuate this purpose, the authority shall review and approve applications of eligible small businesses seeking financial relief, make and enter into agreements that allow eligible small businesses to defer the payment and remittance of certain employment- and business-related taxes imposed and collected on behalf of the State, and monitor and evaluate the effectiveness of the program.

b. The authority shall establish an application process that allows small businesses facing economic hardship due to the COVID-19 outbreak to make and file an application for participation in the program. The authority shall not accept an application submitted after July 31, 2020. The authority shall review each application and shall approve a small business for participation in the program if it demonstrates to the satisfaction of the authority that the small business:

   (1) is registered to do business in this State and has been in operation for one year or more;
   (2) maintains its headquarters or conducts its principal business operations from a physical location within this State;
   (3) had no more than 10 full-time-equivalent employees in each of the four calendar quarters immediately preceding the calendar quarter in which an application is made;
   (4) is facing economic hardship due to the COVID-19 outbreak, as evidenced by the fact that the business has been temporarily shut down, has been required to reduce hours, has had at least a 20 percent drop in revenue, has been materially impacted by employees who cannot work due to the outbreak, or has a supply chain that has materially been disrupted and therefore slowed business-level production; and
   (5) is in good standing with the Department of Labor and Workforce Development and is not delinquent or deficient with respect to the payment of a State tax.

The authority shall notify each small business that it has approved for participation in the program and shall provide each
business that is not approved a written explanation of the reason the
business’s application was denied.
c. The authority shall make and enter into an agreement with
each small business that it has approved for participation in the
program. The agreement shall include:
(1) a detailed description of the applicable employment and
business-related taxes that the small business may defer paying or
remitting in accordance with section 2 of P.L. , c. (C. )
(pending before the Legislature as this bill), the period during
which payment or remittance of the applicable employment and
business-related taxes may be deferred, and the schedule, in
compliance with subsection c. of section 2 of P.L. , c. (C. )
(pending before the Legislature as this bill), the small business shall
follow to pay or remit the applicable employment and business-
related taxes after the tax deferment period has ended;
(2) a requirement that the small business continue to timely file
all returns, reports, and other statements or information with the
Director of the Division of Taxation in the Department of the
Treasury and the Director of the Division of Unemployment and
Temporary Disability Insurance in the Department of Labor and
Workforce Development as is required by law or regulation for the
applicable employment and business-related taxes imposed and
collected during the tax deferment period;
(3) a requirement that each person having ownership interest of
10 percent or more in the business agree to be personally liable for
any applicable employment and business-related taxes imposed and
collected by the small business during the tax deferral period and
for any penalties and interest that may be imposed and required to
be paid for failure to pay or remit the deferred tax in accordance
with the scheduled payment plan after the tax deferment period has
ended;
(4) a requirement that the chief executive officer of the business
or other equivalent officer certify that the small business will make
its best effort not to furlough or lay off any individuals from the
time the agreement is entered into through the end of the tax
deferment period and, if the business furloughed or laid off
individuals as a result of economic hardship due to the COVID-19
outbreak prior to entering the agreement, the business will make a
best effort to re-hire those individuals as soon as possible thereafter;
(5) a method for the business to report on a monthly basis during
the tax deferment period the number of full time equivalent
employees employed by the business, the revenues derived from
business activities conducted by the business, and the amount of
applicable employment and business-related taxes that the small
business has imposed and collected but elected to defer paying or
remitting:
(6) a provision permitting an audit of the books, accounts, and records of the small business by the authority at such time and in such manner as the authority determines to be necessary; and

(7) a provision establishing the conditions under which the agreement may be terminated and the deferred employment and business-related taxes, penalties, and interest may be collected by the authority.

The authority shall transmit a copy of each agreement to the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development.

d. The authority shall prepare and publish an annual report to monitor and evaluate the implementation of the program. The annual report shall include information concerning: the number of small businesses facing economic hardship due to the COVID-19 public health emergency that applied for participation in the program; the number of businesses that were approved and that made and entered into an agreement with the authority; the amount of applicable employment and business-related taxes that were deferred by participating small businesses; and, for calendar years occurring after the tax deferment period has ended, the amount of deferred taxes and any penalties and interest that have been paid or remitted by participating businesses. The authority shall annually submit the report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

e. Notwithstanding any provision of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority determines to be necessary and appropriate to effectuate the purposes of this section, which rules and regulations shall be effective for a period not to exceed 360 days following the date of filing and may thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

2. a. Notwithstanding the provisions of any other law to the contrary, a small business that has made and entered into an agreement with the New Jersey Economic Development Authority in accordance with the program established by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill) may elect to defer, in whole or in part, the payment or remittance of the applicable employment and business-related taxes that the small business is required to impose and collect on behalf of the State during the business’s tax deferment period.

b. A participating small business shall be treated as having paid or remitted the applicable employment and business-related taxes
that the business has imposed and collected but elected to defer
during the tax deferment period without regard to this section, if the
small business continues to timely file all returns, reports, and other
statements or information with the Director of the Division of
Taxation in the Department of the Treasury and the Director of the
Division of Unemployment and Temporary Disability Insurance in
the Department of Labor and Workforce Development as is required
by law or regulation for the applicable employment and business-
related taxes and the small business pays or remits the deferred
taxes in accordance with the payment plan established by
subsection c. of this section.

c. A participating small business shall be required to pay or
remit 50 percent of the applicable employment and business-related
taxes that the small business has imposed and collected but elected
to defer during the tax deferment period not later than June 30,
2021. The small business shall be required to pay or remit the
balance of any deferred employment and business-related taxes that
have not been paid or remitted not later than June 30, 2022.
d. A participating small business shall be required to pay penalty
and interest on the amount of any applicable employment and
business-related taxes that are not paid or remitted in accordance
with the payment plan established by subsection c. of this section.
Penalty and interest shall be assessed by the director pursuant to
R.S.54:49-3, unless otherwise provided in the law imposing such
defered employment or business-related tax. Interest shall accrue
and be required to be paid by the participating business from the
date that the applicable employment or business-related tax was
originally due prior to the agreement with the authority to the date
of actual payment or remittance.

3. For purposes of this act:
"Applicable employment and business-related taxes" means:
(1) taxes imposed pursuant to the “Sales and Use Tax Act,”
P.L.1966, c.30 (C.54:32B-1 et seq.);
(2) taxes imposed pursuant to the “Motor Fuel Tax Act,”
P.L.2010, c.22 (C.54:39-101 et seq.);
(3) taxes imposed pursuant to the "Petroleum Products Gross
Receipts Tax Act,” P.L.1990, c.42 (C.54:15B-1 et seq.);
(4) taxes deducted and withheld from wages pursuant to the
(5) contributions required to be paid pursuant to the workers’
compensation law, R.S.34:15-1 et seq.;
(6) contributions required to be paid pursuant to the New Jersey
"unemployment compensation law," R.S.43:21-1 et seq.;
(7) contributions required to be paid pursuant to the "Temporary
Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.); and
(8) contributions required to be paid pursuant to P.L.2008, c.17
(C.43:21-39.1 et al.)
"Authority" means the New Jersey Economic Development Authority created pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"COVID-19" means the coronavirus disease 2019 (COVID-19), caused by the SARS-CoV-2 virus, and identified in the concurrent declaration of the state of emergency and the public health emergency pursuant to of Executive Order No. 103 of 2020.

“Tax deferment period” means the period beginning on or after the first day of the first month next following the date the participating small business makes and enters into an agreement with the New Jersey Economic Development Authority in accordance with the program established by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill) and ending before January 1, 2021.

4. Notwithstanding any provision of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development may, in consultation with the authority, adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the director determines to be necessary and appropriate to effectuate the purposes of sections 2 to 3 of this act, which rules and regulations shall be effective for a period not to exceed 360 days following the date of filing and may thereafter be amended, adopted, or readopted by the director in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

5. This act shall take effect immediately.

STATEMENT

This bill establishes the Employment and Business-Related Tax Deferral Assistance Program (program), to be administered by the New Jersey Economic Development Authority (EDA), to provide financial relief to New Jersey small businesses suffering economic hardship due to the outbreak of the coronavirus disease 2019 (COVID-19).

The bill requires the EDA to review and approve applications of eligible small businesses seeking financial relief, make and enter into agreements that allow eligible small businesses to defer payment and remittance of certain employment and business-related taxes imposed and collected on behalf of the State, and monitor and evaluate the effectiveness of the program. Under the program, small businesses are to be allowed to defer payments and
remittances including those regularly collected pursuant to the sales and use tax, the motor fuels tax, the petroleum products gross receipts tax, the gross income tax, workers’ compensation contributions, unemployment compensation contributions, temporary disability leave benefits contributions, and family temporary disability leave contributions.

The EDA is required to enter into an agreement with each small business that it has approved for participation in the program. The agreement is required to include: a detailed description of the applicable taxes that the small business is permitted to defer, the period of deferral, and the repayment or remittance schedule; a requirement that small business owners agree to be personally liable for any applicable taxes and for any penalties and interest for failure to pay or remit the deferred tax; requirements related to the retention and rehiring of employees by the small business; and reporting, audit, and termination requirements. Under the bill, a small business is also required to file timely all returns, reports, and other statements or information. The bill requires the EDA to transmit a copy of each agreement to the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development.

The EDA is required to prepare and publish an annual report to monitor and evaluate the implementation of the program and submit the report to the Governor and the Legislature. The bill allows the EDA, the Director of the Division of Taxation in the Department of the Treasury, and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development to adopt rules and regulations immediately upon filing with the Office of Administrative Law.